

Message Text

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ACTION OES-07

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FM AMEMBASSY VIENNA
TO SECSTATE WASHDC PRIORITY 2553
INFO AMEMBASSY MEXICO PRIORITY
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USERDA HQ GERMANTOWN PRIORITY

C O N F I D E N T I A L SECTION 1 OF 2 VIENNA 6562

USIAEA

DEPT PASS IO/SCT

E.O. 11652: GDS
TAGS: IAEA, TECH, PARM, MNUC, MX
SUBJECT: PROPOSED TRANSFER OF RESEARCH REACTOR AND FUEL TO
MEXICO

REF: VIENNA 6097

1. MISSION HAS COMPLETED FURTHER DISCUSSIONS WITH
AGENCY RE SAFEGUARDS AND OTHER PROVISIONS OF PROPOSED
IAEA/MEXICO/USA PROJECT/SUPPLY AGREEMENT FOR TRANSFER
OF RESEARCH REACTOR AND FUEL THEREFOR FROM U.S. TO
MEXICO. AGENCY HAS PROPOSED FOLLOWING REFORMULATION
OF ARTICLE VI OF DRAFT TEXT: QUOTE 1. MEXICO
UNDERTAKES THAT THE SUPPLIED REACTOR, THE
SUPPLIED MATERIAL AND ANY NUCLEAR MATERIAL CONTAINED
USED, PROCESSED OR PRODUCED IN OR BY THE USE OF THE
REACTOR OR THE SUPPLIED MATERIAL, INCLUDING SUBSEQUENT
GENERATIONS OF SPECIAL FISSIONABLE MATERIAL, SHALL
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NOT BE USED FOR THE MANUFACTURE OF ANY NUCLEAR WEAPON
OR TO FURTHER ANY OTHER MILITARY PURPOSE OR FOR THE
MANUFACTURE OF ANY OTHER NUCLEAR EXPLOSIVE DEVICE.
QUOTE 2. IT IS SPECIFIED THAT THE SAFEGUARDS
RIGHTS AND RESPONSIBILITIES OF THE AGENCY PROVIDED
FOR A PARAGRAPH A OF ARTICLE XII OF ITS STATUTE
ARE RELEVANT TO THE PROJECT. IT IS FURTHER

SPECIFIED THAT THEIR IMPLEMENTATION IS SATISFIED BY THE APPLICATION OF SAFEGUARDS PROCEDURES PURSUANT TO THE AGREEMENT BETWEEN THE UNITED MEXICAN STATES AND THE INTERNATIONAL ATOMIC ENERGY AGENCY FOR THE APPLICATION OF SAFEGUARDS IN CONNECTION WITH THE TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA AND THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS, SIGNED ON 27 SEPTEMBER 1972 AND WHICH ENTERED INTO FORCE ON 14 SEPTEMBER 1973.

QUOTE 3. IN THE EVENT THE BOARD OF GOVERNORS OF THE AGENCY DETERMINES THAT THE AGENCY IS FOR ANY REASON UNABLE TO APPLY SAFEGUARDS AS PROVIDED IN PARAGRAPH 2 OF THIS ARTICLE OR OTHER EQUIVALENT AGENCY SAFEGUARDS TO THE SUPPLIED REACTOR, THE SUPPLIED MATERIAL AND ANY NUCLEAR MATERIAL REFERRED TO IN PARAGRAPH 1 OF THIS ARTICLE, MEXICO AND THE UNITED STATES SHALL AGREE FORTHWITH ON MEASURES TO BE TAKEN TO VERIFY COMPLIANCE WITH THE UNDERTAKING SET FORTH IN PARAGRAPH 1 OF THIS ARTICLE. IF THE BOARD OF GOVERNORS MAKES SUCH A DETERMINATION IT MAY REQUIRE THE RETURN OF THE SUPPLIED REACTOR, THE SUPPLIED MATERIAL AND ANY NUCLEAR MATERIAL REFERRED TO IN PARAGRAPH 1 OF THIS ARTICLE.

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QUOTE 4. WHEN ANY OF THE SUPPLIED MATERIAL OR ANY SPECIAL FISSIONABLE MATERIAL CONTAINED, USED, PRODUCED OR PROCESSED IN OR BY THE USE OF THE SUPPLIED REACTOR OR THE SUPPLIED MATERIAL REQUIRES REPROCESSING, CONVERSION, FABRICATION, ALTERATION OR STORAGE, SUCH REPROCESSING, CONVERSION, FABRICATION, ALTERATION OR STORAGE SHALL BE PERFORMED IN FACILITIES ACCEPTABLE TO ALL PARTIES TO THIS AGREEMENT.

QUOTE 5. IN THE EVENT THE BOARD OF GOVERNORS OF THE AGENCY DETERMINES, IN ACCORDANCE WITH ARTICLE XII.C OF THE STATUTE, THAT THERE HAS BEEN ANY NON-COMPLIANCE WITH ARTICLE VI OF THIS AGREEMENT, THE BOARD SHALL CALL UPON MEXICO TO REMEDY SUCH NON-COMPLIANCE FORTHWITH, AND THE BOARD SHALL MAKE SUCH REPORTS AS IT DEEMS APPROPRIATE. IN THE EVENT OF FAILURE BY MEXICO TO TAKE FULLY CORRECTIVE ACTION WITHIN A REASONABLE TIME, THE BOARD MAY TAKE ANY OTHER MEASURES PROVIDED FOR IN ARTICLE XII.C. OF THE STATUTE. UNQUOTE.

2. AGENCY HAS ALSO PROPOSED STRENGTHENING ARTICLE XI RE PHYSICAL PROTECTION BY MAKING IT MANDATORY FOR MEXICO TO ESTABLISH PHYSICAL PROTECTION MEASURES WHICH MUST BE ACCEPTABLE TO AGENCY AND U.S. PROPOSED REDRAFT OF THIS ARTICLE IS AS FOLLOWS: QUOTE MEXICO SHALL TAKE ALL THE MEASURES NECESSARY FOR THE PHYSICAL PROTECTION OF THE SUPPLIED REACTOR, THE SUPPLIED MATERIAL AND ANY NUCLEAR MATERIAL WHICH ARE SUBJECT TO THE PROVISIONS OF THIS AGREEMENT. SUCH MEASURES MUST BE ACCEPTABLE TO THE AGENCY AND THE UNITED STATES AND SHALL AS A MINIMUM MEET THE STANDARDS LAID DOWN IN THE AGENCY'S RECOMMENDATIONS FOR THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL (AGENCY DOCUMENT INFCIRC/225/REV.1). MEXICO SHALL
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KEEP THE GGENCY INFORMED OF THE MEASURES IT WILL TAKE. THE PARTIES SHALL CONSULT AT THE REQUEST OF ANY OF THEM REGARDING PHYSICAL PROTECTION. UNQUOTE.

3. RE REVISED ARTICEL VI, AGENCY (FISCHER) STRONGLY PREFERS DELETION OF "FALL BACK" SAFEGUARDS PROVISIONS FOR AGENCY CONTAINED IN LATTER PART OF PARA 2 OF

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ACTION OES-07

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INFO AMEMBASSY MEXICO PRIORITY

USERDA HQ WASHDC PRIROITY

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C O N F I D E N T I A L SECTION 2 OF 2 VIENNA 6562

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EARLIER VERSION OF THIS ARTICLE, SINCE AGENCY MAINTAINS THAT ITS SAFEGUARDS RIGHTS AND RESPONSIBILITIES SET FORTH IN PARA A OF ARTICLE XII OF AGENCY'S STATUTE ARE ADEQUATE IN EVENT IAEA/MEXICO NPT/TREATY OF TLATELOLCO SAFEGUARDS AGREEMENT IS TERMINATED FOR ANY REASON. FYI. FISCHER IS CONCERNED RE POSSIBILITY OF LEGAL CHALLENGE TO "FALL BACK" LANGUAGE AS ORIGINALLY DRAFTED, SINCE INFCIRC/66/REV.2 (PARA 4) PROVIDES THAT ITS PROVISIONS "ONLY BECOME LEGALLY BINDING UPON THE ENTRY INTO FORCE OF A SAFEGUARDS AGREEMENT AND TO THE EXTENT THEY ARE INCORPORATED THEREIN." IF IAEA/MEXICO NPT/TREATY OF TLATELOLCO SAFEGUARDS AGREEMENT IS TERMINATED FOR ANY REASON, AGENCY WOULD TAKE IMMEDIATE STEPS TO NEGOTIATE NEW SAFEGUARDS AGREEMENT, AND IN INTERIM, AGENCY WOULD RELY ENTIRELY ON ARTICLE XII.A OF AGENCY STATUTE AS BASIS FOR IMPLEMENTING SAFEGUARDS UNTIL

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SUCH TIME AS A NEW SAFEGUARDS AGREEMENT ENTERS INTO FORCE. AGENCY BELIEVES FIRST SENTENCE OF PARA 2 OF REVISED ARTICLE VI OF DRAFT AGREEMENT CLEARLY GIVES AGENCY THIS RIGHT. END FYI.

4. REVISED PARA 3 OF ARTICLE VI OF DRAFT AGREEMENT IS SLIGHTLY MODIFIED VERSION OF MISSION'S PROPOSED SECOND ALTERNATIVE TO PROVIDE U.S. WITH "BACK UP" SAFEGUARDS RIGHTS. LAST SENTENCE WAS INCLUDED IN RECOGNITION OF AGENCY'S STATUTORY REQUIREMENTS FOR AGENCY PROJECTS.

5. INCLUSION OF NEW PARA 5 OF REVISED ARTICLE VI OF THIS AGREEMENT REFLECTS AGENCY'S DESIRE TO STRENGTHEN THE SAFEGUARDS PROVISIONS OF THE AGREEMENT BY EXPLICITLY PROVIDING FOR AGENCY STATUTORY RIGHTS IN EVENT OF NON-COMPLIANCE WITH ARTICLE VI OF THIS AGREEMENT. SIMILAR PROVISIONS ARE CONTAINED IN NUMEROUS AGENCY SAFEGUARDS AGREEMENTS.

6. FOLLOWING MINOR CORRECTIONS SHOULD BE MADE TO LATTER PART OF PARA 3 OF ANNEX CONTAINING SAFETY STANDARDS AND MEASURES: CHANGE "RECEIVE" TO "REQUIRE" IN LINE NINE AND DELETE "THE PROVISION OF" IN LINE TEN. COMPLETE PHRASE SHOULD READ: "...ON THE BASIS OF WHICH THE AGENCY WILL BE ABLE

TO REQUIRE THE APPLICATION OF ADDITIONAL SAFETY MEASURES IN ACCORDANCE WITH PARA 4.8 OF THE SAFETY DOCUMENT."

6. MISSION BELIEVES AGENCY'S PROPOSED REVISIONS ARE ACCEPTABLE.

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7. AGENCY IS ANXIOUS TO INITIATE NEGOTIATIONS ON REVISED TEXT WITH MEXICO ASAP. SINCE BG DOCUMENT MUST BE READY FOR DISTRIBUTION NLT AUGUST 16, IN ACCORDANCE WITH RECENT BG DECISION RE DISTRIBUTION OF SAFEGUARDS AGREEMENTS. TEXT HAS ALREADY BEEN SENT TO TRANSLATORS, BUT WILL BE HELD PENDING U.S. RESPONSE TO FOREGOING REVISIONS, IN VIEW ABSENCE OF KEY AGENCY LAWYER INVOLVED WITH THIS AGREEMENT FOR THREE WEEKS BEGINNING JULY, MISSION URGES RESPONSE SOONEST. STONE

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Message Attributes

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